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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 655

LONE STAR STEEL COMPANY,
Petitioner,

vs.

LOIS McGEE,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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TEXT

13 Am. Jur. 2d, Carriers, §38, et seq., p. 590 17

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QUESTION PRESENTED

The only question presented is whether Petitioner was and is a common carrier by railroad, engaging in Interstate Commerce, as shown by its individual actions and those interwoven with the actions of its practically wholly owned subsidiary in switching interstate freight and completing line haul freight movements for the public.

STATEMENT

We believe the statement of the Petitioner warrants elaboration with respect to the factual matters confronting the Courts below on the questions critical to their decision.

HISTORICAL DEVELOPMENT OF THE RELATIONSHIP BETWEEN PETITIONER AND T & N

The Petitioner was incorporated in the State of Texas on April 8, 1942, as the Lone Star Steel Company (R. 8-9 and 28). In its operations, it acquired extensive properties, railroad trackage and railroad rolling equipment (R. 11-13, 29-30 and Attachments 8 and 9, R. 53-57; see Plat, R. 111, and photographs R. 112-117).

On August 4, 1948, the Texas & Northern Railway Company,[1] a common carrier by rail in the stream of interstate commerce (R. 92), was incorporated in the State of Texas with an authorized capital stock of 5,500 shares, 3,313 of which had been issued and were outstanding (R. 19-20 and 75). Of these 3,313 shares, the Petitioner owns 3,308 shares (R. 11, 20, 94-95). The Record does not reflect when the Petitioner acquired extensive railroad facilities[2] that were leased or sold to the T & N after its creation, but the series of transactions begun January 31, 1950, would suggest that the facilities were owned and built before the incorporation of the T & N (R. 10-11 and 46-48).

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1. Hereinafter called the T & N.

2. The Petitioner obviously was performing its own railroad movements prior to the date of incorporation of T & N (Aug. 4, 1948), since it had acquired in January, 1948, a flat car (R. 53) and some twenty-one gondola cars (R. 54).

The extent of the property that was obviously being operated by the Petitioner before its lease or sale may be gained from this summary of transactions between the Petitioner and T & N:

On January 31, 1950, the Petitioner leased to the T & N land upon which was located a repair shop, rip track and yard office, and which facilities were on April 20, 1955, surrendered back to the Petitioner.[3]

On April 13, 1953, the Petitioner leased to T & N an 11.459 tract along the line of T & N Railway on property northeast of the plant property, which was to be used only for railroad purposes, and which it deeded to T & N on February 28, 1957.[4]

On April 29, 1953, the T & N leased to the Petitioner its "belt line track" within the plant of the Petitioner. It later deeded the line to Petitioner.[5]

On May 22, 1953, T & N leased to the Petitioner trackage within Petitioner's plant area known as the classification yards and containing tracks 102-106, and which property it later conveyed to the Petitioner.[6]

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3. Rip track and repair shop described as Tract 3 (Vol. 2, R. 236). Also see R. 46-47, Plat, R. 111, reference point for service pump house number 18 (just above uppermost legend of "U. S. Government.").

Yard office described in Tract 4, Vol. 2, R. 238, R. 46-47, Plat, R. 111, number 94, between Tracks 120 and 218.

4. Vol. 2, R. 242, Plat, R. 111, shown on photograph R. 116 as triangular segment at bottom of page made by intersection of highway and T & N main line; Vol. 2, R. 255; R. 47(c).

5. Vol. 2, R. 260, 262, R. 47(d). Belt line is marked on Plat, R. 111, and connects with track opposite legend "Reilly Tar & Chemical Co.".

6. Vol. 2, R. 262, 264, 270, R. 47-48(e), Plat, R. 111, Photo R. 116, Stipulation, R. 99; Deposition of Betts, R. 181-183.

On August 23, 1956, the T & N and Petitioner entered into an agreement that required the T & N to maintain all highway safety signal equipment at Lone Star, Texas, that might be located on rails belonging to the Petitioner, as well as to maintain three turnouts connecting the Petitioner's classification yard with the T & N and turnouts from the Petitioner's track 107 to the plant of the Reilly Tar and Chemical Company and the turnout from Petitioner's track number 500 to the plant of the Southwestern Gas and Electric Company.[7]

On the same date, the Petitioner and T & N entered into a mutual agreement under which each would make available to the other "such locomotive equipment as it may be able to spare on a rental basis of $8.00 per hour used".[8]

On November 22, 1956, the Petitioner and T & N entered into an agreement superseding an earlier exchange of letters on April 30, 1953, covering the interchange between the parties as to outbound and inbound cars.[9] Provision was made for outbound cars to be interchanged on storage tracks of the T & N east of State Highway 26, and the main line of T & N west of State Highway 26 and on the Steel Company's tracks numbers 111 and 112. Inbound cars were required to be interchanged in the classification yard of Lone Star, Texas. Reference to the plat (R. 111) and photographs (R. 116-117) will show that the agreement required the Petitioner to move some outbound cars off its property, across a State Highway and onto the main line of T & N beyond such highway.[10]

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7. Vol. 2, R. 294, Plat, R. 111; R. 50(m).

8. Vol. 2, R. 296, R. 50(n).

9. Vol. 2, R. 297, R. 50, 51(o).

10. See northeast corner of plat (R. 111), where classification yard is shown at northeast upper left-hand corner in the nature of tracks beginning with 106, and lower portion of photographs (R. 116-117) showing classification yards and lead into main line across highway shown in lower left-hand quadrant of pictures.

By this agreement of November 22, 1956, it was further provided that T & N would be privileged to use the classification yard for switching purposes, as well as tracks numbers 107 and 500 of the Petitioner, in order to serve other industries on the T & N line, and that if the future requirements of customers other than Petitioner made it necessary for the railway to use other tracks, such usage would be agreeable to the Petitioner.

On November 23, 1956, the agreement of August 23, 1956,[7] was reiterated.[11]

On January 4, 1957, the Petitioner granted T & N the privilege of using its scale and track 106 of Petitioner on which it was located, because T & N at various times had need of the use of the scales for weighing railroad cars.[12]

On May 12, 1958, the Petitioner and T & N entered into an agreement whereby cars were leased by T & N to Petitioner, and which cars were released back to the railroad on October 19, 1959.[13]

On December 10, 1961, a continuing lease agreement was entered into between the Petitioner and T & N for the leasing of twenty-five gondola cars.[14]

On March 1, 1962, the Petitioner and T & N entered into a lease agreement covering rental of a T & N switch locomotive by the Petitioner. The agreement contemplated periodic renting of one of T & N's switch locomotives, provided one is available, and for delivery of the same to Petitioner for switching cars in its plant upon three days notice.[15]

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11. Vol. 2, R. 299, R. 51(p).
12. Vol. 2, R. 300, R. 51(q).
13. Vol. 2, R. 302, 305, R. 51(r).
14. Vol. 2, R. 305, R. 52(s).
15. Vol. 2, R. 307, R. 52(4).

INDEPENDENT ENTITIES LOCATED WITHIN OR ADJACENT TO PETITIONER'S PLANT

Some fourteen entities, independent of ownership or control by Petitioner, maintained facilities within the plant area during the past ten years (R. 58-59), and at least seven of these had shipped and received commodities by rail during this period (R. 102-104, and see Plat, R. 111, where location of some appears). An additional twenty-three independent entities performed repairs and like services within the plant (R. 59-60). There were three subcontractors in this category which received material by rail (R. 60) and twenty-one suppliers of material and equipment, some of which came by rail (R. 61). Additionally, within the classification there were thirty-eight prime contractors who did turn-key work, and twenty-eight who furnished labor, equipment, etc., and all of whom received part of their shipments by rail (R. 61-63).

All of the billing for freight rates on inbound and outbound shipments to industries located within the Lone Star Plant would be made from point of origin to point of destination, with Lone Star, Texas, as the station for such industries (¶42, R. 104). These rates are known as "line haul freight rates" (R. 144), so as to include a charge not only for hauling the freight from station to station, but to cover the element of picking it up and setting it out at the dock of the industries served (R. 146-147; R. 93-94). On line haul movements, T & N makes a freight charge and receives a portion of the total revenue for all outbound and inbound shipments from point of origin to point of destination in servicing Lone Star station shipments, regardless of whether it handles the entire rail movement or Lone Star handles a portion of it (R. 106).

In the usual operation, the Petitioner would in a six month period handle one hundred forty-three (143) cars of liquid oxygen inbound for Linde-Gas, and some four or five cars of inbound merchandise for Textar, Inc., as well as some two cars inbound for C. A. Hackett, Inc., all of which are independent entities receiving and shipping their respective commodities (R. 102-103). The Petitioner made switching movements for C. A. Hackett, Inc., Southwestern Electric Power Company, Linde-Gas Company, Textar, Inc., and occasionally for Gulf Coast Pipe Coating Company, all independent entities on the plant property, as well as occasional movements involving equipment or material of a construction contractor thereon (¶57, R. 109). These movements, certainly insofar as Gulf Coast Pipe Coating Company was concerned, constituted a part of the overall shipping process desired by that company, and on occasion were done because the method was more convenient to Petitioner and to the T & N and because of the distances involved in the movement (¶46, R. 105).

Although Petitioner makes no direct charge by way of tariffs and received no direct freight revenues for rail services performed by it (¶48, R. 106), the T & N does make such charges and received freight revenue on all inbound and outbound shipments from point of origin to point of destination, regardless of whether it handles the entire rail movement or the Petitioner handles a portion thereof (¶49, R. 106). T & N makes a special tariff charge for all switching performed for an industry located on the Lone Star Plant proper, other than that involving a line haul rail movement (¶50, R. 106).

As owner of all but five shares of the outstanding 3,313 shares of common stock of the T & N, the Petitioner received from it $2,000,000.00 by way of dividends from October 1, 1955 to September 30, 1965, and substantial additional

amounts for use of hospital facilities, fire protection facilities, telephone facilities, etc., furnished T & N by the Petitioner (¶¶ 12 and 13, R. 94-95).

As an integral part of the operation of the independent entities located on the Petitioner's plant property, shipment must be made and received by them by rail (¶47, R. 105-106). Of all outbound rail shipments from Lone Star, approximately 83% were for points beyond the limits of the State of Texas or the Continental United States of America, and for all inbound shipments by rail, 65% originated from points without the limits of the State of Texas or without the limits of the Continental United States of America (¶18, R. 96)

As of August 6, 1963, the Petitioner owned eight diesel electric locomotives; ninety-four cars of railroad rolling stock; and six railroad cranes, together with several miles of rail trackage (¶14, R. 95). The Interstate Commerce Commission checks locomotives numbers 3 and 4 of the Petitioner twice a year and on one occasion made complaint of an improperly functioning fuel line which was repaired in the Petitioner's heavy duty shop (¶17, R. 96). On an average of once or twice a month, the Petitioner with its rail crew would take one of these inspected engines out on the T & N main line a short distance to the T & N classification yards across Highway 259 to pick up rail cars containing material needed by Lone Star (¶45, R. 105).

The track scales of Petitioner, the privilege of using which had been given T & N for weighing railroad cars (*supra*, 5), was checked by a weighted rail car provided by the Kansas City Southern Railway, and moved into the plant area (¶24, R. 99).

ARGUMENT AND AUTHORITIES

The development of the Petitioner's operations as a common carrier are not unlike that of logging roads described in the Tap Line cases.[16] It is fair to assume from the Record that prior to the incorporation of T & N on August 4, 1948, the Petitioner was engaged in moving commodities by railroad in interstate commerce. Whether T & N was created as an agency through which Petitioner could continue such movements as a common carrier, or the Petitioner became an agency through which T & N could operate as a common carrier, the obvious result has been that both Petitioner and T & N have become common carriers by railroad, and have operated jointly as such.

The Record discloses an intermingling of property and duties between the Petitioner and T & N, evidenced by exchanges of property, and the undertaking on the part of T & N to maintain equipment and trackage belonging to the Petitioner (*e.g., supra,* 4). There was, and apparently still exists, a mutual agreement between the Petitioner and T & N whereby each would make available for the use of the other locomotive equipment that it might be able to spare on an hourly rental basis (*supra,* 4). It is entirely conceivable that this agreement contemplated the swapping of locomotives at any time and place without the formality of changing crews. The T & N was given the privilege of using the classification yards and trackage of the Petitioner to serve other industries on the T & N line, and that of using its scale track (*supra,* 5), which was apparently under the auspices of the Petitioner checked

16. *United States* v. *Louisiana & P. R. Co.*, 234 U.S. 1, 58 L. Ed. 1185, 1194.

by a Kansas City Southern Railway weighted rail car (*supra*, 8).

What the Petitioner and T & N actually did under their various agreements and interlocking duties and privileges definitely makes each a common carrier by railroad. In the first place, the Petitioner was required in some instances to move outbound cars off its premises, across a public highway and onto the T & N main line, an interstate highway (*supra*, 4). Irrespective of whether the freight moved was that of the public, as represented by independent entities on the plant property, or that of the Petitioner, the interchange requirement made the Petitioner an agency which started these outbound cars on their way to the public represented by consignees of the shipments. Since of all outbound shipments from the Petitioner's plant approximately 83% entered interstate or foreign commerce (*supra*, 8), and since these outbound shipments were carried under "line haul freight rates" that made the delivery to the Lone Star station a part of the service required by and given to the public under the freight rate charges, the Petitioner clearly acted as a common carrier in its services.

Aside from the contribution of the Petitioner to the line haul movement of outbound cars to a point of interchange off its property, it admittedly took part in line haul movements to point of destination for the public, as represented by some of the independent industries within and adjacent to its plant property (*supra*, 6). It further performed services for the public by doing switching work for some of the industries, some of which at least constituted a part of the overall shipping process desired by the public as represented by such industries (*supra*, 7). Although the Petitioner made no charge for these services, the T & N did, and as owner of all but five shares of that company, and beneficiary of $2,000,000.00 by way of dividends over a ten year

period, the Petitioner received ample indirect benefits to make its service one for hire (*supra*, 7-8).

The Petitioner seems to think that because its service to the public was small in comparison to the work done within its plant, it should not be considered a common carrier. This conclusion is wholly at variance with the results reached in Tap Line cases[16] wherein Mr. Justice Day said:

> "It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber, and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it, rather than the extent of its business, which is the real criterion determinative of its character." (234 U.S. 24, 58 L.Ed. 1194).

Another contention of the Petitioner is that it may have been a private carrier in its switching operations and services of its own plant, but that it was not a common carrier. This was the contention of the Defendant in the *Brooklyn Terminal* case.[17] The Brooklyn Terminal Company did no work for the public as such, but did move freight under individual contracts with ten interstate railroads and several steamship companies. It was paid not by the shipper or consignee but by the railroad or steamship company upon whose account the transportation service was performed at a fixed rate per pound of freight. It did not hold itself out as a common carrier, nor file with the Interstate Commerce Commission any tariffs, etc., and its terminal

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17. *United States* v. *Brooklyn Eastern District Terminal*, 249 U.S. 296, 63 L. Ed. 613.

was designated by the rail and water lines in tariffs filed by them as a receiving and delivering station for freight in the port of New York. It is seen that the terminal company attempted to wholly isolate itself from any contact with public carriage, and to perform its work purely under contract with specific railroads and steamship companies. Upon this it based its contention in resisting application of The Hours of Service Act, particularly insisting that it did not hold itself out to the public as a carrier, but transported merely as an agent such freight as was delivered to it only by those with whom it elected to make a special contract; and that this work was performed not as a part of the whole carriage which the railroads had undertaken as common carriers, but for the railroads alone. After stating that had the services been performed by the railroad companies or any of them directly, the Act would be applicable, Mr. Justice Brandeis thus posed the question for decision:

> "The precise question presented is, therefore, whether the fact that the Terminal conducts these operations, not as an integral part of a single railroad system, but wholly as an agent for one or several, exempts the railroad companies, because they are not the employer, and exempts the Terminal because it is not a common carrier; thus making inapplicable a provision regarding the physical operation of the property devised for the protection of employees and the public." (249 U.S. 305, 63 L.Ed. 617).

After remarking that the incidental services performed by the Terminal Company were the same as those performed by the railroad companies at their other stations, the Court thus answered the question it had put:

> "True, the service is performed by the Terminal under contracts with the railroad companies as agent for them, and not on its own account. But a common carrier does not cease to be (307) such merely because

> the services which it renders to the public are performed as agent for another. The relation of connecting carriers with the initial carrier is frequently that of agent. See *Bank of Kentucky* v. *Adams Exp. Co.*, 93 U.S. 174, 23 L. Ed. 872." (249 U.S. 306-307, 63 L. Ed. 617).

The Petitioner not only acted as agent for the T & N in its switching movements, but also served the public directly on line haul movements by performing the initial and final services of delivering and picking up shipments to the independent industries served by its trackage. Not only was it an agent of the T & N in transporting freight for the public, but it performed this service on its own account.

In both the *Brooklyn Terminal* case and that of *U. S.* v. *California*,[18] it was said that whether a transportation agency is a common carrier depends not upon its corporate charter or declared purposes, but upon what it does. In the *California* case, a Belt Railroad performed the service of transporting freight cars at a flat charge per car under "switch lists" made by delivering or receiving carriers to and from industries and wharf connections. The line was wholly owned by the State of California, and was held to serve as a link in the through transportation of interstate freight shipped to or from points in San Francisco over the connecting carriers. Mr. Justice Stone said of it:

> "Its service is of a public character, for hire, and does not differ in any salient feature from that which this Court, in United States v. Brooklyn Terminal, supra (249 U.S. 304, 305, 63 L. Ed. 616, 617, 39 S. Ct. 283), held to be common carriage by rail in interstate commerce within the meaning of the Federal Hours of Serv-

18. *U. S.* v. *California*, 297 U.S. 175, 181, 80 L. Ed. 567, 571.

ice Act (March 4, 1907) 34 Stat. at L. 1415, Chap. 2939, U.S.C.A., Title 45, §61." (297 U.S. 182, 80 L. Ed. 571).

The Petitioner was performing identical services in delivering freight to and from the T & N line that the California and Brooklyn Terminal Companies were performing on a much grander scale. There exists far stronger reasons for considering the Petitioner a common carrier than existed in either of the two cases treated. The record in those cases indicates that the Terminal Companies were distinct and separate in organization and ownership from the carriers served by them. On the other hand, the Petitioner owns the T & N lock, stock and barrel, save for five qualifying shares of its stock. This brings it more nearly in line with the *Southern Pacific Terminal Company*[19] and *Union Stock Yard* cases.[20] In *Southern P. Terminal,* the terminal company was organized as a Texas corporation, 99% of the stock of which was owned by Southern Pacific Company, also owner of the Southern Pacific Railroad and Steamship Systems. In determining whether the Terminal Company could be considered a common carrier by reason of its ownership by Southern Pacific Company, Mr. Justice McKenna concluded that the control and operation of the railroads and terminal company by the holding company had united them into a system, forming a link in the chain of transportation carried on by the railroad companies. In holding the Terminal Company a common carrier for hire, the Court quoted from the findings of the I.C.C., thus:

> "The terminal company is part and parcel of the system engaged in the transportation of commerce, and

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19. *Southern P. Terminal Co.* v. *Interstate Com. Com.,* 219 U.S. 498, 521-523, 55 L. Ed. 318-319.

20. *United States of America* v. *Union Stock Yard & Transit Company of Chicago et al.,* 226 U.S. 286, 57 L. Ed. 226, 232-233.

to the extent that such commerce is interstate the Commission has jurisdiction to supervise and control it within statutory limits. To hold otherwise would in effect permit carriers generally through the organization of separate corporations, to exempt all of their terminals from our regulating authority." (219 U.S. 522, 55 L. Ed. 318-319).

In the *Union Stock Yard* case, there was a similar setup of a holding company owning substantially all of the stock yard company and an independent terminal company serving it that is referred to as the Junction Company. Notwithstanding the fact that the Stock Yard Company had divested itself of the operation of the railroad system, it was held that because it got two-thirds of the profits received by the Junction Company for performing service in connection with the railroad transportation, that there was a joint service rendered by the Stock Yard Company and the Junction Company, making both companies common carriers for hire. The short haul of shipments from the transfer tracks to sheds or pens and *vice versa* was said to be no less a part of their transit between their points of origin and destination than was the carriage over any other portion of the route:

"And it is of little significance that the stock yards company does not hold itself out as ready or willing generally to carry live stock for the public, for all the railroad companies at South Omaha do so hold themselves out, and it stands ready and willing to conduct, and actually does conduct, for hire, a part of the transportation of every live stock shipment which they accept for carriage to or from that point, including such shipments as are interstate.

"We think that these companies, because of the character of the service rendered by them, their joint operation and division of profits, and their common owner-

> ship by a holding company, are to be deemed a railroad within the terms of the act of Congress to regulate commerce, and the services which they perform are included in the definition of transportation as defined in that act." (226 U.S. 305-306, 57 L. Ed. 233-234).

The reasoning of the quotation would seem to more strongly apply to the relationship of the Petitioner and T & N, where there is direct ownership and consequent control of the carrier with interrelated rail movements on the part of the Petitioner and its subsidiary.

An interesting outgrowth of the *Union Stock Yard* case[20] is found in a later case between the same parties.[21] A history of efforts of the Stock Yard to remove itself from Interstate Commerce Commission regulation may be found in the opinion of the Court, and the fact that the efforts culminated in the Stock Yard divesting itself of all control and participation in the operation of its railroad, and performing the service only of loading and unloading stock. This service alone was held to be sufficient to make it a carrier engaged in transportation of property wholly by railroad, the Court saying:

> "It is enough that the loading and unloading are rail transportation services performed at a railroad terminal as a common or public calling by one who, in rendering it, engages in the transportation of property by railroad within the meaning of the Act." (308 U.S. 219-221, 84 L. Ed. 206).

It was also stated in the opinion, that:

> "It is not important, as appellant seems to think, that as an incident to the service it renders to shippers and to the line-haul carriers, it acts as agent of the latter." (*id.*).

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21. *Union Stock Yard and T. Company* v. *United States*, 308 U.S. 213, 217-220, 84 L. Ed. 198, 204-205.

Apart from the relationship between Petitioner and T & N, the fact that the Interstate Commerce Commission checked locomotives of the Petitioner twice a year, and exercised its jurisdiction to the extent of requiring repair of a fuel line on one of the locomotives is strongly persuasive of the fact that the Petitioner was and is indeed a common carrier engaged in interstate transportation of property by railroad. If the facts were otherwise, the I.C.C. exceeded its jurisdiction when it inspected the engines and issued the repair order. At least, such is our interpretation of 49 U.S.C.A., §1(1) (a).[22]

AUTHORITIES RELIED UPON BY THE PETITIONER

The *Taylor* case[23] stands for no more than that a common carrier by express is not a railroad within the contemplation of the F.E.L.A. There is a vast distinction between the position of the express company which owned no trackage and engaged in no railroad movements as such and the Petitioner which owned some six locomotives and ninety-four cars, and leased an additional five locomotives and fifty cars (R. 53-57). Additionally, the Petitioner owned extensive trackage (R. 111) and employed on an average of more than sixty men engaged in railroad work such as switchmen, brakemen, engineers, firemen and maintenance personnel (R. 13, 29).

The facts of the present case remove it from the reach of those cases holding that an industry engaging in railroad activities within its own plant, and in no wise serving the public, is a private rather than a common carrier. The activities of the Petitioner extended far beyond the mere

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22. Also see 13 Am. Jur. 2d, Carriers, §38, *et seq.*, p. 590.

23. *Wells Fargo & Co.* v. *Taylor*, 254 U.S. 175, 65 L. Ed. 205.

switching of its own plant. The circumstance that it delivered outbound freight off its plant premises to the T & N made it a link in the transportation system that hauled this freight to interstate points. Furthermore, its switching of the independent industries on and near its plant premises and the spotting and picking up of freight classified as line haul freight made it a public carrier.

Indeed, under the arrangements existing according to the record in this case, any shipper in the Continental United States or beyond could command the services of Petitioner by initiating a shipment by rail bound for any of the industries or entities described above (p. 6). The mere placing of the goods in commerce bound by rail for such entity would make available the rail services of Petitioner on an non-discriminatory basis, and such services would be paid for by whoever is picking up the tab for the shipment. If this is not common carriage, nothing is.

In the cases relied upon by the Petitioner, there was a distinct break between the activities of the industry in question and the launching of the freight on its journey. In those cases there was not an interrelated activity between an industry and a wholly owned subsidiary, but the freight was delivered to railroads wholly unrelated to the plant involved and which did no work whatever for such plants. When the Petitioner transported freight off its premises and delivered it on the main line of the T & N, it served the consignees of that freight, who doubtless paid the bill, and thus the public just as much as it served itself.

F.E.L.A. TO BE LIBERALLY CONSTRUED

This Court has on many occasions stated that the F.E.L.A. is not to be narrowed by refined reasoning, but is to be construed liberally to fulfill the purposes for which it was enacted.[24] Judge Medina has pointedly said that this Court has told the Circuit Courts in various ways and on numerous occasions that in F.E.L.A. cases the railroad employee is to be given the benefit of every doubt.[25] Although not directly in point, the extent of coverage of the F.E.L.A. is illustrated in the *Parden* case.[26] It was there said that Congress intended to cover all rail carriers that constitutionally could be covered in the enactment of the F.E.L.A.

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24. *Jamison* v. *Encarnacion*, 281 U.S. 635, 640, 74 L. Ed. 1082, 1085; *Urie* v. *Thompson*, 337 U.S. 163, 182, 93 L. Ed. 1282, 1299; *Coray* v. *Southern Pacific Co.*, 335 U.S. 520, 93 L. Ed. 208; *Johnson* v. *Southern P. Co.*, 196 U.S. 1, 18, 49 L. Ed. 363, 369.

25. *Ratigan* v. *New York Central R. R. Co.*, 29 F.2d 548, 553 (cert. den.), 368 U.S. 891, 7 L. Ed. 2d 89.

26. *Parden* v. *Terminal R. of Alabama Docks Dept.*, 377 U.S. 184, 187-188, 12 L. Ed. 2d 233, 237.

CONCLUSION

We respectfully urge that the Trial Court and Court of Appeals correctly determined that the Petitioner is and was subject to the provisions of the Safety Appliance Act and the F.E.L.A., and consequently entered the correct judgment in this cause. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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By: .....
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CERTIFICATE OF SERVICE

I, Franklin Jones, one of the attorneys for Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that copies of the foregoing Brief of Respondent in Opposition were served upon Messrs. Burford, Ryburn & Ford, 1511 Fidelity Union Life Building, Dallas, Texas, and Mr. Albert Tarbutton, Lone Star, Texas, attorneys for Petitioner, by United States mail, postage prepaid, on this the ..... day of October, 1967.

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Of Counsel for Respondent